



Wildlife and Sport Fish Restoration Program



Policy Advisory FY21-003: Using the Value of Dredge Materials as Match to a National Coastal Wetlands Conservation Grant Program

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To: WSFR Regional and Headquarters staff

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Issue: This advisory relates to using the value of dredge spoils, that are collected through a partnership with the U.S. Army Corps of Engineers (ACOE), as eligible match to a Federal award under the National Coastal Wetlands Conservation Grant Program (NCWCG Program).

Summary: States that use State-owned and controlled assets to meet cost sharing/matching requirements of an award must do so following program law, regulation, policy, and the Cost Principles at 2 CFR 200. No Federal agency costs or contributions may be considered as non-Federal match unless a Federal statute allows it. There currently is no Federal statute that would allow Federal costs or contributions to be allowed as non-Federal match under the NCWCG Program. However, if a partnership with a Federal agency is involved in managing the asset, that alone does not create a Federal nexus. A Federal nexus does not occur when the State-owned asset remains a State-owned asset, even when a Federal agency provides services in managing the asset. If the Federal agency involved in providing services for managing the State-owned asset would ask for compensation for associated activities under a Federal award, this would need to be further assessed for appropriate methods to provide compensation to a Federal agency under an award.

Topic: The NCWCG Program has a mandatory cost share requirement. A State has requested that WSFR consider if the value of dredge products/materials used in a NCWCG Program award can be considered as eligible and allowable cost share under the Federal award.

The pertinent information is:

- The dredge materials are harvested from State lands and remain State property until such time as the materials are conveyed to a third party. There is no conveyance during the storage process.

- The materials are dredged by the ACOE through a Federal/State partnership at no cost to the State. The materials become available as part of the ACOE disposal management planning.
- Per State law (see below), there is a severance fee charged by the State at conveyance of the dredge materials. Certain entities/uses allow the State to waive the severance fees.
- The sediment removal and/or relocation is not being performed as part of a mitigation settlement, program, or other mitigation responsibility.

Considerations:

1. Federal Nexus: The ACOE does not at any time take or receive an ownership interest in the dredge materials. Therefore, there is no Federal nexus to the materials. The ACOE does not incur any costs that would be associated with the Federal award under the NCWCG Program. The NCWCG Program requires that cost share/matching funds be non-Federal. WSFR finds from the facts provided that there is not a Federal nexus associated with the dredge materials.

2. Mitigation: The NCWCG Program, under statute and regulation, does not allow funds to be used for acquisition, restoration, enhancement, or management of lands to mitigate recent or pending habitat losses resulting from the actions of agencies, organizations, companies, or Individuals. It would be ineligible for these dredge materials to be used for these mitigation purposes under a NCWCG Program award.

3. Use as In-kind Match: The dredge materials are owned by the State and are an asset. As a State asset, the (value of) dredge materials may be considered a State contribution to the NCWCG Program award.

4. Valuation: States may apply the value of State owned/provided goods and services to the Federal award. (2 CFR 200.306(d) - *Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in subpart E of this part.*) The standard is to determine the “fair market value” of the goods. The value of the goods must be determined in accordance with the usual accounting policies of the non-Federal entity and approved by WSFR. Even though Florida law provides for a waiver of payment for the dredge material, it remains a State asset and therefore can be used as “goods” toward match, and its market value (see below) may be calculated based on the county rates described in the statute for purposes of determining the material’s in-kind value for match. Another standard that a State presents (e.g., local rates by cubic yard) and that is supported by the market, also could be used to determine the current fair market value of the dredge materials.

Reference: The severance fees for removing sovereign submerged lands is found in Florida’s Administrative Code 18-21.001. Other States may have similar codes. Although the code allows for a waiver from charges if for a public purpose, the values provided in the code may still be referenced to determine market value for purposes of the award:

Florida Administrative Code 18-21.001:

18-21.011 Payments and Fees.

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(3) Severed Dredge Materials.

(a) When an activity involves the removal of sovereignty materials to upland property by dredging or any other means, payment per cubic yard of material shall be as follows, except as provided in section 253.03, F.S.

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| 1. Monroe County | \$3.25 |
| 2. Bay, Brevard, Broward, Charlotte, Collier, Dade, Duval, Escambia, Lee, Manatee, Palm Beach, Pasco, Pinellas and Sarasota counties | \$2.25 |
| 3. All other counties | \$1.25 |
| 4. Minimum payment | \$50.00 |

(b) These payments shall not be used for dead shell and mining leases which will be subject to individual royalty or other compensation payments.

(c) A waiver of the severed dredge material payment shall be approved when:

1. The materials are being placed on public property and used for public purposes;
2. It is affirmatively demonstrated that the severed dredge material has no economic value, as demonstrated by a requirement to dispose the material in a landfill or when 75% of the material passes through a #200 sieve;
3. A governmental entity conducts a project with the sole objective of environmental restoration or enhancement and the Board determines that waiving the severance fee is in the public interest, as defined in rule 18-21.003, F.A.C.
4. Where sale of the material or contractor use of the material is solely for a publicly-funded environmental restoration project.